

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

MARGARET FIELD,

Plaintiff,

RONALD MASON,

Defendant.

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)
)
)
)

Case No.: _____

05-40105-FDS

NOTICE OF REMOVAL

Defendant, Wal-Mart Stores, Inc. Associates' Health and Welfare Plan (the "Plan"), incorrectly sued as BlueCross BlueShield of Illinois Health Insurance, hereby removes this action to this Court pursuant to 28 U.S.C. §§ 1441(a), (b), and (c) and 28 U.S.C. §§ 1331 and, in support thereof, states as follows:

1. A civil action is now pending in the Superior Court of Worcester County, Massachusetts, Docket No. 03-2403, wherein Margaret Field is Plaintiff and Ronald Mason is Defendant. A copy of "Motion for Order as to Distribution of Funds" filed in the state court is attached hereto as Exhibit A. This document was the initial pleading served upon the Plan setting forth the claims upon which such action or procedure is based.

2. The Plan is entitled to removal of this civil action pursuant to 28 U.S.C. §§ 1331 and 1441. Plaintiff asserts claims which raise substantial questions of federal law and which arise out of federal law. Plaintiff seeks to have the state court determine subrogation rights arising from an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §

1001 *et seq.* ("ERISA"). Plaintiff's claims relate to an employee benefit plan as defined and described in 29 U.S.C. § 1001(a) and § 1003(a).

3. Plaintiff's claims relate to the employee benefit plan within the meaning of ERISA, 29 U.S.C. § 1001 *et seq.* and are preempted and superseded by 29 U.S.C. § 1144(a).

4. This action is removable pursuant to the complete preemption doctrine without regard to the well-pleaded complaint rule. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987).

5. This Court has original jurisdiction of ERISA actions under 29 U.S.C. §§ 1132 (a) and (e). This action is founded on claims or rights arising under the laws of the United States in that it is based upon and requires the application of ERISA, 29 U.S.C. § 1144(a). Removal jurisdiction exists under 28 U.S.C. § 1441 (a) and (b).

6. Resolution of Plaintiff's claim for relief requires the Court to construe the terms of an ERISA plan. Specifically, the Court must construe the reimbursement provision contained in the Plan to determine the parties' rights in this action.

7. Plaintiff seeks to recover benefits from an employee welfare benefit plan covered by ERISA. Plaintiff's claim is completely preempted by ERISA because it is properly characterized as a claim for benefits under 29 U.S.C. § 1132(a)(1)(B). *See Arana v. Ochsner Health Plan*, 338 F.3d 433 (5th Cir. 2003) (*en banc*); *Singh v. Prudential Health Care Plan, Inc.*, 335 F.3d 278 (4th Cir. 2003).

8. Plaintiff's claim for a declaration of rights under the Plan could have been brought as a separate action. Plaintiff's claim against the Plan is therefore removable as a "separate and independent claim." 28 U.S.C. § 1441(c); *Bond v. Reliance Ins. Co.*, 433 F. Supp. 243, 248 (D.N.J. 1977) (claim is separate and distinct if the claim could have been the subject of an independent action by itself, and without being joined or consolidated with others.). Therefore, the entire action is removable pursuant to 28 U.S.C. § 1441(c). Because removal is proper under 28 U.S.C. § 1441(c), not all defendants are required to join this Notice of Removal. *Thomas v. Shelton*, 740 F.2d 478, 483 (7th Cir. 1984).

9. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

10. Venue is proper in this Court.

11. The following attachment is provided pursuant to 28 U.S.C. § 1446(a). A copy of the "Motion for Order as to Distribution of Funds" is attached as Exhibit A.

12. Pursuant to 28 U.S.C. § 1446(d), the Plan has given written notice of the removal of this action to all parties and has filed a copy of this notice in the state court.

WHEREFORE, the Plan hereby removes this action from said state court into this Court.

Respectfully submitted,

Skoler, Abbott & Presser, P.C.
One Monarch Place, Suite 2000
Springfield, Massachusetts 01144
Telephone: (413) 737-4753
Facsimile: (413) 787-1941

By: 
Susan G. Fentin (BBO No. 632962)

Thomas H. Lawrence¹
John M. Russell²
LAWRENCE & RUSSELL, LLP
5050 Poplar Avenue, Suite 1717
Memphis, Tennessee 38157
Telephone: 901.844.4433
Facsimile: 901.844.4435

Attorneys for Defendant, Wal-Mart Stores,
Inc. Associates' Health and Welfare Plan

¹ Motion for *pro hac vice* admission filed contemporaneously.

² Motion for *pro hac vice* admission forthcoming.

CERTIFICATE OF SERVICE

I hereby certify that this 28 day of June, 2005, I have caused to be placed in the U.S. Mail, postage prepaid, a true and correct copy of the foregoing **NOTICE OF REMOVAL** to:

Gary R. LeBlanc
20 Cross Street
Gardner, MA 01440

Foster & Bibeau
1445 Main Street
P.O. Box 679
Tewksbury, MA 01876

Peter V. Kent, P.C.
P. O. Box 2164
Danvers, MA 01923

John H. Bee
Gargiulo/Rudnick, LLP
66 Long Wharf
Boston, MA 02110

Margaret P. Cottonreader
Hartford Life and Accident Ins. Co.
P. O. Box 1810
Alpharetta, GA 30023-1810

Smp. Fast

Commonwealth of Massachusetts

WORCESTER, ss.

Superior Court Department
Docket No. 03-2403

MARGARET FIELD,

Plaintiff)

vs.)

RONALD MASON,

Defendants)

MOTION FOR ORDER AS TO DISTRIBUTION OF FUNDS

NOW COMES the Plaintiff, MARGARET FIELD, and hereby respectfully requests that this Honorable Court issue an order as to the distribution of settlement funds to lien holders and as reasons therefore states as follows:

1. The Plaintiff incurred medical expenses in excess of \$40,000.00.
2. The limits of the Defendant's automobile insurance policy were \$20,000.00.
3. After deducting a legal fee of \$6,666.66 and out-of-pocket expenses incurred by the undersigned in the amount of \$561.56, there remains a balance of \$12,771.78 to be distributed amongst the lien holders and the Plaintiff.
4. Liens on file total \$44,876.91 as follows:

a.	Foster & Bibeau Collections for Heywood Hospital	\$10,287.45
b.	Hartford Life and Accident Ins. Co. Disability payments	\$ 3,753.40
c.	BlueCross BlueShield of IL Health Insurance	\$ 8,936.95
d.	Peter V. Kent, P.C. Collections for UMASS Memorial Med. Ctr	\$21,899.11
5. Negotiations have failed, specifically with BlueCross BlueShield of IL who will accept nothing less than the full amount of their lien.
6. There are not enough settlement funds to pay all lien holders in full.
7. The Plaintiff asserts that she is entitled to some amount of the proceedings remaining.

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EXHIBIT

A

8. The undersigned seeks an order of the court directing specific amounts be paid from the settlement proceeds to the lien holders in full satisfaction of their liens as well as an amount paid to the Plaintiff for her pain and suffering.

WHEREFORE, the Plaintiff, MARGARET FIELD, respectfully requests that her motion be granted for the above-stated reasons and that an order issue specifically setting forth the sums to be paid to the Plaintiff and each lien holder.

Respectfully submitted,
Plaintiff, MARGARET FIELD,
By her Attorney:



Gary R. LeBlanc, Esquire
20 Cross Street
Gardner, MA 01440
Telephone: (978) 630-3300
BBO No. 543081

May 30, 2005

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05-40105-FDS

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Margaret Field

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gary R. LeBlanc, Esq., 20 Cross Street, Gardner, MA 01440

DEFENDANTS

Ronald Mason

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known):

John H. Bee, Esq., 66 Long Wharf, Boston MA 02110

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 319 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 449 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) SOCIAL SECURITY <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 FEDERAL TAX SUITS
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities: Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 29 U.S.C. 1132

Brief description of cause:

Plaintiff seeks adjudication of the terms of an employee welfare benefit plan governed by ERISA.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/27/2005

SIGNATURE OF ATTORNEY OF RECORD

Garry R. LeBlanc

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

FILED
 UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

05-40105 - FDS

1. Title of case (name of first party on each side only) Margaret Field v. Ronald Mason
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☒ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (if yes, submit a separate sheet identifying the motions)
- YES ☒ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas H. Lawrence and John M. Russell, Lawrence & Russell, LLP

ADDRESS 5050 Poplar Avenue, Suite 1717, Memphis, TN 38157

TELEPHONE NO. 901-844-4433

Addendum to Category Form

In compliance with paragraph 8 of the Category Form, attached is a true and correct copy of the "Motion for Order as to Distribution of Funds."

Commonwealth of Massachusetts

WORCESTER, ss.

Superior Court Department
Docket No. 03-2403

MARGARET FIELD,

Plaintiff

vs.

RONALD MASON,

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Respectfully submitted,
Plaintiff, MARGARET FIELD,
By her Attorney:



Gary R. LeBlanc, Esquire
20 Cross Street
Gardner, MA 01440
Telephone: (978) 630-3300
BBO No. 543081

May 30, 2005

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